Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	**WC Docket No. 10-90**
	)	
Developing an Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**
	)	

REPLY COMMENTS OF SOUTH DAKOTA NETWORK, LLC

South Dakota Network, LLC (SDN), by its attorneys, hereby replies to comments submitted to update the record on proposed reforms to intercarrier compensation for tandem switching and transport charges and transit services raised in the *ICC FNPRM*.[1] The comments support the need for the Commission to consider the unique issues associated with centralized equal access (CEA) providers when considering access charge reform, as recommended by SDN. However, the comments also show that access stimulation continues to be a problem, which the Commission should address quickly.

I. Access Reform for Centralized Equal Access Requires Separate Consideration

Commenters put forward a number of proposals concerning access charge reform for tandem services, which highlight the need to consider the unique issues associated with CEA providers and support SDN's comments that CEA providers should be considered separately. For example, CenturyLink and AT&T argue that the Commission should clarify that

[1] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92

terminating carriers have the obligation to offer direct termination if requested and Sprint argues for the point of interconnection for the exchange of voice traffic "at the places where IP network operators currently exchange non-voice traffic...".[2] The Commission has granted Section 214 authority to SDN, however, which establishes SDN as the aggregating point for all originating and terminating traffic to its rural ILEC members.

As shown by SDN, this requirement cannot be easily or quickly unraveled and it should not be unraveled at this time. In its comments, SDN demonstrated that the CEA authority granted by the Commission and the CEA functions provided by SDN, such as the functionality to provide equal access, still are necessary and beneficial. It would make no sense to eliminate CEA at this time and require LECs to newly implement equal access functionality in their switch and associated back office functions when equal access is being phased out. Further, in granting SDN authority to operate, the Commission and the South Dakota Public Utilities Commission found that the benefits of rural access traffic concentration, for both originating and terminating traffic, made rural areas more attractive markets from an IXC perspective and was in the public interest.[3] This remains the case today.

In addition, Sprint argued for the "complete and expeditious implementation of the bill-and-keep system of compensation to replace all remaining access rate elements...".[4] However, SDN demonstrated that, as a CEA provider, it does not have the same ability to

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and 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*Transformation Order* or *ICC FNPRM*).

[2] Comments of Sprint Corporation (Sprint Comments) at 4.

[3] *Memorandum Opinion, Order and Certificate (SDCEA, Inc.)*, 5 FCC Rcd. 6978 (Common Carrier Bureau (1990)) ¶24 (finding benefits of centralized equal access services in rural areas of South Dakota justified public interest finding).

replace access charge revenues with other sources like ILECs and CLECs and that changes to intercarrier compensation for tandem switching and transport provided by a CEA provider would lead to inadequate revenues for this service.

SDN recovers all costs of its regulated CEA switched access services through interstate and intrastate access charges assessed to carriers using these services. The access charges are based on embedded costs and they are subject to regulatory review by the Commission and the appropriate state commission. SDN does not have local retail customers or access to local service revenues or subscriber line charges. There are no end users of CEA service that could compensate SDN under a bill-and-keep regime. SDN also does not have access to federal or state universal service support. Therefore, SDN must be able to recover the cost of its regulated access functions from all carriers that use these services to connect to the rural LECs.

In the recently released *Aureon Order*, the Commission has found that a CEA provider is a CLEC.[5] In spite of this, the issues raised by SDN remain. In the *Transformation Order*, the Commission found competitive LECs "are free to recover reduced revenues through end-user charges."[6] This mechanism is not available to SDN because it has no end users.

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[4] Sprint Comments at 1.

[5] *In the Matter of AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Memorandum Opinion and Order, Proceeding Number 17--56, EB-17-MD-001, FCC 17-148,rel. Nov. 8, 2017 (*Aureon Order*).

[6] *Transformation Order* at ¶ 850. The Commission declined to provide an explicit recovery mechanism for competitive LECs because "competitive carriers have generally been found to lack market power in the provision of telecommunications services, their end-user charges are not subject to comparable rate regulation, and therefore those carriers are free to recover reduced access revenue through regular end-user charges." *Transformation Order* at ¶ 864. This is not the case for SDN.

In the *Aureon Order*, the Commission states that a CEA provider should get revenues lost through access charge reform "elsewhere," including from LECs. The Commission states, "CEA providers may, for example, need to revise their business model and consider recovering a portion of their costs from the LECs who subtend their networks. Those LECs have available all of the cost recovery options adopted by the Commission and affirmed by the Tenth Circuit."[7] However, it is not clear how this is possible since it would appear to be contrary to the Commission's 214 Order granting SDN authority to operate and LECs are not customers of SDN's access service.

Further, if SDN assessed charges to the LECs, it is not clear how the LECs could recover this new cost as their rates are subject to the restrictions in the *Transformation Order* and their ability to recover additional access charges is precluded through the CAF-ICC formula. It also appears that the current universal service rules would preclude the recovery of these costs by the LECs as they would not be loop cost recoverable through High Cost Loop Support and it appears that they would not fall under the definition of Interstate Common Line Support. Further, LECs are not receiving universal service support sufficient to cover their current USF eligibility because of the Commission's Budget Control Mechanism. Therefore, even with a rule change to allow the recovery of additional cost through the universal service fund, it would be meaningless without an increase in the universal service budget.

In the *Transformation Order,* the Commission also stated that "[a]pplication of our access reforms will generally apply to competitive LECs via the CLEC benchmarking rule."[8] Thus, the Commission stated that CLECs that benchmark their rates to price cap carriers are

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[7] *Aureon Order* at p. 15, n. 153.

required to follow the transition for price cap carriers and CLECs that benchmark their rates to rate-of-return carriers are required to follow the transition for rate-of-return carriers.[9] In the *Aureon Order*, the Commission concludes that a CEA provider's rates must comply with the benchmarking rule, but the Commission does not "reach the issue" of whether the CEA provider's rates violate the benchmarking rule "because we do not have an adequate record to determine the pertinent benchmark rate."[10]

Similarly, it is not clear what benchmark the Commission believes SDN should follow, especially since there is no other CEA provider in South Dakota. It also is not clear what SDN's service area would be as it performs CEA and switching functions related to multiple LECs throughout the state of South Dakota.

In any event, it is clear access charge reform for CEA providers raises issues different than those for other CLECs and tandem providers, which warrants separate consideration of access charge reform for CEA providers.

SDN also notes that the total amount of traffic carried by its CEA service is an extremely small fraction of the total access minutes nationwide. Therefore, maintaining the current access charge mechanisms for CEA tandem access services should not significantly impact any other carrier. On the other hand, the current cost recovery mechanisms brought

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[8] *Transformation Order* at at ¶807.

[9] In the *CLEC Benchmarking Order*, the Commission adopted rules requiring non-dominant access providers that were largely free from the regulations applicable to incumbent LECs, to benchmark their access rates, in general, to those charged by the incumbent local exchange carrier operating in the same area. *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (*CLEC Benchmarking Order*).

[10] *Aureon Order* at ¶24.

the benefits of competition, equal access and advanced functionalities to South Dakota and, therefore, cost recovery for SDN's CEA service must be maintained at this time.

II. The Commission Should Take Targeted Action to Address Access Stimulation

Some Commenters raise concerns with access stimulation and propose various solutions to address the issue. AT&T argues that "[t]he access stimulation schemes that have endured often involve situations in which carriers have refused direct connections (despite Commission and court precedent), and then bill excessive transport charges, including lengthy per-mile, per-minute charges to remote areas on large volumes of stimulated or aggregated traffic."[11] AT&T also argues that to prevent LECs from abusing the network edge rules and charging unreasonable rates, the Commission could modify its rules on access stimulation to provide that, "whenever a carrier's traffic is imbalanced such that it carries at least three or more times more terminating access traffic than originating access traffic (or vice-versa), the default network edge would automatically revert to a tandem within the same LATA as the carrier's end office, to be selected by the sending carrier.[12]

Verizon builds on this argument and states that "access stimulators generally refuse to offer dedicated transport at all or refuse to offer such dedicated transport on reasonable terms."[13] Verizon further alleges:

> In some cases, access stimulators subtend a "Centralized Equal Access" (CEA) provider that claims an exclusive right to all terminating traffic. The forced routing through the CEA provider layers high per-minute tandem switching charges on top of the excessive mileage charges billed by the access stimulating carriers, further exacerbating the consumer harms caused by traffic pumping.[14]

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[11] Comments of AT&T Services, Inc. to Refresh the Record (AT&T Comments) at 13.
[12] AT&T Comments at 23-24.
[13] Comments of Verizon (Verizon Comments) at 7.
[14] Verizon Comments at 7.

Verizon urges the Commission immediately to reduce transport rates to bill and keep for carriers engaged in access stimulation.

Verizon also asks the Commission to cap tandem-switched transport mileage, alleging that "LECs have moved their point of interconnection with a CEA provider or shifted transport routes from a nearby price cap LEC tandem to a distant tandem operated by the rural LEC itself or a provider with which the rural LEC has a business relationship."[15] Verizon asks the Commission to adopt an interim rule "that caps incumbent LECs' billed tandem-switched transport mileage at the distance to the closest incumbent LEC tandem and caps CLECs' billed transport mileage at 10 miles."[16]

SDN agrees that the Commission should take action to address traffic pumping issues. However, the alleged issues identified by Commenters can and should be addressed by more targeted actions than those proposed by the Commenters. Thus, SDN has urged the Commission to reaffirm that traffic stimulator CLECs are required to accept IXC traffic where the transport function is provided by an intermediate carrier other than the CLEC, and where the IXC desires such direct connection. SDN has asked the Commission to reaffirm that SDN is not precluded from providing competitive transport services. SDN also has urged the Commission to reaffirm that the Commission's *Transformation Order* recognized the propriety of contract arrangements between a willing buyer and a willing seller, and that tariffed rates, terms, and conditions may be used as a generic offering. In the case of SDN, this would make clear that SDN can provide switching services, when the IXC desires to use such services, for traffic terminating to an access stimulator at a negotiated rate.

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[15] Verizon Comments at 9.
[16] Verizon Comments at 9.

SDN urges the Commission to reject the other proposals from IXCs concerning access stimulation and alleged mileage pumping because they are overbroad and would impact carriers that are not engaged in access stimulation or mileage pumping.

III. Conclusion

As demonstrated herein, SDN, as a CEA provider, continues to bring the benefits of equal access and competition to rural areas of South Dakota. However, SDN faces unique issues and, therefore, the Commission should define and address tandem and transit services provided by a CEA provider separately. SDN, however, supports targeted proposals, as discussed herein, to address access stimulation issues raised in the comments.

Respectfully submitted,
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